IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 126 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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OSMAN MAHAMADBHAI SIPAI - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR AR SHAIKH for Petitioner(s) : 1,
DS AFF.NOT FILED (R) for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 25/01/2006

ORAL JUDGMENT

1.Osman Mahamadbhai Sipai, petitioner-detenu has filed this petition of habeas corpus with a prayer that this Court may be pleased to quash and set aside the order

of detention dated 30/9/2005 passed by the Police Commissioner, Rajkot, detaining authority, under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985. Petition has been filed on 29/12/2005. On 10/1/2006, this Court has issued Rule which was returnable on 25/1/2006. Rule is served. Mr.L.R.Pujari, learned APP appears on behalf of respondent and therefore, with consent of the parties, matter is taken up for final hearing in this Court.

2. Ms.Banna Dutta, learned advocate for the petitioner has invited my attention to the order dated 30/9/2005 passed by the Police Commissioner, Rajkot under the provisions of PASA Act. The learned counsel has invited my attention to the order of committal dated 30/9/2005 by which the detaining authority has sent the petitioner-detenu to the Surat Jail. The learned counsel has also invited my attention to the grounds of detention furnished by the authority dated 30/9/2005 to the petitioner-detenu. After referring to the grounds, the learned counsel submitted that grounds revels following offences:

1) Offence registered against the petitioner at 'A' Division Police Station, Rajkot in connection with CR

No.312 of 2005 dated 30/8/2005 under Section 379 which provides punishment of theft and Section 427 and 114 of IPC where the petitioner-detenu has committed theft of C.D. Player Tape of Canwood Company valued at Rs.20,000/-.

2) Offence registered against the petitioner at 'A' Division Police Station, Rajkot in connection with CR No.313 of 2005 dated 30/8/2005 under Section 379, 427, 114 and 511 of IPC where the petitioner-detenu has committed damage of Rs.650/-.

3) Offence registered against the petitioner at 'A' Division Police Station, Rajkot in connection with CR No.315 of 2005 dated 29/8/2005 under Section 379, 427 and 114 of IPC where the petitioner-detenu has committed theft of Car Tape of Pioneer Company valued at Rs.2,000/-.

4) Offence registered against the petitioner at Bhaktinagar Police Station, Rajkot in connection with CR No.256 of 2005 dated 25/8/2005 under Section 379 and 114 of IPC where the petitioner-detenu has committed theft of Car Tape of High Power Company valued at Rs.1,500/-.

5) Offence registered against the petitioner at Bhaktinagar Police Station, Rajkot in connection with CR No.257 of 2005 dated 19/8/2005 under Section 406, 420 and 114 of IPC where the petitioner-detenu has committed theft of Cooking Gas valued at Rs.700/- ans one cycle valued at Rs.300/-.

3. It was also stated that as the petitioner was carrying on illegal business and therefore, he is a 'dangerous person' under the provisions of PASA Act. The statement of witness under Section 9(2) of the Act has also been recorded. The petitioner has also made representation through his advocate on 19/12/2005.

4. The learned advocate for the petitioner has stated that in order to bring the person within the meaning of 'dangerous person' as defined under Section 2(c) of the Act, there should be subjective material as the petitioner is habitually committing the offences. The learned counsel further submitted that Sub Section 4 of Section 3 also provides punishment for acting in a manner prejudicial to the maintenance of public order that such person is dangerous person and his anti social activities which affect or likely to affect

adversely to the maintenance of public order. The learned counsel further submitted that all these incidents which has been narrated were simply incidents of theft and of ordinary criminal cases where the provision of Indian Penal Code can taken into consideration and the authority may resort to the same in this behalf. The learned counsel further submitted that even if all the offences which are taken into consideration there can not be any breach of public order but there may by only breach of law and order situation. The learned counsel has submitted that all these offences and all the activities of the detenu are of theft and there are nothing to do with maintenance of public order. In support of the same, the learned counsel for the petitioner has relied upon judgment of the Hon'ble Supreme Court in the case of Piyush Kantilal Mehta v. Commissioner of Police, reported in AIR 1989 SC 491 and Division Bench judgment of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J) in Letters Patent Appeal No.223 of 2000 in Special Civil Application No.554 of 2000 in the case of Ashok Balabhai Makwana. He has also relied upon the judgment of the Division Bench of this Court (Coram:Acting C.J. C.K.Thakker and K.M.Mehta, J.) in the case of Ashokbhai Jivrajbhai v. Commissioner of Police reported in 2000

(1) GLR 816. The learned counsel has also relied upon the judgment in the case of Mustakmiya Jabbarmiya Shaikh v. M.M.Mehta, Commissioner of Police and others, reported in 1995 (2) GLR 1268 (SC).

5. The learned counsel has submitted that if this is a case where the ordinary offences describing Indian Penal Code have been committed by the detenu and even value is also not more and therefore, resorting by the authority in this case of detenu is nothing but clear abuse of law.

6. On the other hand, Mr.L.R.Pujari, learned APP has relied upon the detention order passed by the authority. The authority has not filed affidavit in this behalf.

7. I have considered the facts and circumstances of the case in view of the submissions made by the learned counsel for the petitioner and judgments cited by the learned counsel for the petitioner. Having heard the learned counsel for both the parties, in my considered view, the detaining authority has passed the order of detention without there being any credible and cogent material in this behalf. Contentions of the petitioner

are squarely covered by the decisions of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and Division bench Judgment of this Court (Coram: M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. no.554 of 2000 in case of Ashok Balalbhai Makwana, another judgment of this Court (Coram: C.K.Thakkar and K.M.Mehta, J.J.) in the case of Ashokbhai Jivrajbhai (supra) and judgment in the case of Mustakmiya Jabbarmiya Shaikh (supra). And therefore, the order of detention is required to be quashed and set aside.

8. In view of the same, I am of the view that the order of detention cannot be sustained by law. I hereby quash and set aside the order of detention. Petition is allowed. Osman Mahamadbhai Sipai, detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

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